



## **Staff Report**

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### **DISCUSSION AND DIRECTION REGARDING POLICIES FOR ISSUING PERMANENT ENCROACHMENT AGREEMENTS**

Honorable Mayor and Council Members:

#### **Summary**

Staff is requesting reconfirmation of current policies for issuing permanent encroachment agreements for structures that are constructed within the public right-of-way.

#### **Background**

On December 9, 2003, the City Council adopted Ordinance Number 994 as codified in Section 22-6 of the Municipal Code regulating encroachments into the public right-of-way. This ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments that include above ground structures such as retaining walls, fences, poles, and awnings. This class of encroachment is commonly known as “permanent encroachments,” although the City retains the right to revoke the permit and require removal if the structure is not being used or if it interferes with planned public improvements.

Section 22-6(b) requires the Director of Public Works to review all major encroachment applications. If the Director finds the application is in compliance with the Municipal code, the Director will recommend approval with conditions necessary to protect the health and safety of the public and the City. The City Council may choose to approve or to conditionally approve the application only if it finds that there is some public benefit for the encroachment. Section 22-7(e)(1) provides examples of acceptable public benefits, such as added off-street parking, or sidewalk, safer sight distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition.

After the adoption of Ordinance Number 994, the City Council gave staff directions that the Council would generally find public benefit in applications to replace existing retaining walls in the public right-of-way or if additional off-street parking was created. Council indicated they would not find public benefit in applications for new retaining walls or fences when the sole purpose of these structures was to increase the usable yard area of a private residence or business. In addition, the encroachment shall not create any hazardous condition to the public. Staff has been making recommendations for issuing permanent encroachment agreements based on these general directions.

Prior to the adoption of Ordinance Number 994 in 2003, there were already many existing structures that were constructed in the public right-of-way without a permanent encroachment agreement. The City is currently issuing agreements for these existing structures based on complaint basis. Priority is given to those situations that are creating hazardous conditions to the public. Most of these existing structures require relocation and is a lengthy process to coordinate with the property owners. Because of the City's limited resources, only a few of such agreements can be processed each year.

### **Discussion**

Staff is requesting reconfirmation of current policies for issuing permanent encroachment agreements for structures that are encroaching onto public right-of-way. The current policies require all new permanent encroachment agreements be reviewed on a case by case basis. The Public Works Director will make recommendations with conditions of approval in compliance with the Municipal Code, and present the findings to the Council. The existing policies do not allow the construction of any new retaining walls or fences with the sole purpose to increase the usable yard area of a private residence or business.

Staff is also seeking confirmation of the process for issuing permanent encroachment permit for existing structures that were already constructed within public right-of-way. The current policy is to process these agreements based on complaint basis. Priority is given to those encroachments that are posing an immediate hazardous condition to the public. The process is lengthy which requires a lot of coordination with the property owners. These encroachment agreements are processed based on the City's resources allowed.

There are also many other existing structures that are encroaching onto public right-of-way but do not create a hazardous condition. The adopted ordinance allows only the City Council to issue agreements for these encroachments. However, the administrative process is lengthy. It is believed that this process can be streamlined if authority can be given to staff for issuing agreements for existing retaining walls (or even fences) that do not create a hazardous condition, and were installed prior to the adoption of Ordinance Number 994. As indicated before, the Council had found public benefits in the past for applications to replace existing retaining walls in the public right-of-way.

Instead of applying for a permanent encroachment agreement, there are other options that a property owner can pursue to install an encroachment onto the right-of-way:

1. The property owner can request the City to vacate sufficient right-of-way so that the structure can be installed on private property after the right-of-way vacation.
2. In the case when the City owns the land in fee, the property owner can request to purchase sufficient property from the City to install the structure.

**General Plan/Vision Statement**

The issuance of permanent encroachment agreement satisfies the following goal and policy in the General Plan:

Policy 2081.6 *“Street and road improvement standards, including rights-of-way, pavement width and grade, should provide for reasonable safety and recognize variations in local physical conditions.”* - The installation of a new structure within City right-of-way shall not pose an adverse physical condition to the public.

**Fiscal Impact**

There is no fiscal impact to the City. A permit fee is collected for each application.

**Public Contact**

Public contact includes posting of City Council agenda.

**Recommendation**

It is recommended that the City Council reconfirm the policies for issuing permanent encroachment agreements for structures that are encroaching onto public right-of-way; and direct staff to amend the City Ordinance to reflect the adopted policies.

**Alternatives**

1. Refer back to staff for more information.

**Attachments**

- A. Ordinance Number 994

Respectfully submitted,

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Gilbert Yau, PE  
Senior Civil Engineer

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Raymond E. Davis III, PE, PTOE  
Director of Public Works

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Jack R. Crist  
City Manager

**Staff Contact:**

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Director of Public Works  
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**RESOLUTION NO. \_\_\_\_\_**

**DISCUSSION AND DIRECTION REGARDING POLICIES FOR ISSUING  
PERMANENT ENCROACHMENT AGREEMENTS**

**WHEREAS**, the City of Belmont is authorized by Municipal Code Sec. 22-6 to issue encroachment permits for construction of structures in the public right-of-way; and,

**WHEREAS**, the Municipal Code Sec. 22-6(e) requires the following finding to approve a permanent encroachment agreement:

1. There is a public benefit to the encroachment as the new structure shall improve an existing undesirable physical condition; and,
2. The encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
3. The City will be duly protected from liability for injury to persons and property; and,
4. The required bonds will guarantee the faithful performance of all conditions and requirements specified in the encroachment agreement; and,

**WHEREAS**, the existing policies do not encourage the construction of any new retaining walls or fences with the sole purpose to increase the usable yard area of a private residence or business; and,

**WHEREAS**, all encroaching structures must be proven by the applicant that there are no hazardous conditions created by the encroachment; and,

**WHEREAS**, there are many existing structures in public right-of-way that were constructed without a permanent encroachment agreement prior to the adoption of Ordinance Number 994; and

**WHEREAS**, the City is currently issuing agreements for these existing structures based on complaint basis; and,

**WHEREAS**, priority is given for those existing encroachments that are posing an immediate hazardous condition to the public; and,

**WHEREAS**, the process is lengthy and the encroachment agreements are processed based on the City's resources allowed; and,

**WHEREAS**, in order to streamline the process, authority can be given to staff for issuing encroachment agreements for existing retaining wall that does not pose a hazardous condition to the public.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Belmont:

1. Reconfirm the existing policies for issuing the permanent encroachment agreements.
2. Direct staff to prepare a revised ordinance to allow Public Works Director to issue permanent encroachment agreements for replacement of existing retaining walls that do not pose a hazardous condition to the public and were constructed prior to the adoption of Ordinance Number 994.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on April 8, 2008 by the following vote:

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CLERK of the City of Belmont

APPROVED:

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MAYOR of the City of Belmont